MICHIGAN SUPREME COURT

Office of Public Information

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FOR IMMEDIATE RELEASE

FALSE FIREFIGHTER'S CASE TO COME BEFORE SUPREME COURT NEXT WEEK

LANSING, MI, November 7, 2003 – The appeal of a man who masqueraded as a firefighter, soliciting donations for victims of September 11, will come before the Michigan Supreme Court for oral arguments next week.

In *People v. Goldston*, the defendant, who was not a firefighter, wore a t-shirt with "Firefighter" on it and solicited donations, which he collected in a firefighter's boot, for victims of September 11. After he was arrested, a police search of the defendant's home turned up firefighter paraphernalia, a firearm, and marijuana. The defendant claims the evidence should have been suppressed, contending that the search warrant was deficient. The prosecution argues for a "good faith" exception to the exclusionary rule, which bars the use of evidence obtained in violation of the Fourth Amendment.

Also before the Court is *Mayor of the City of Lansing, et al. v. Michigan Public Service Commission and Wolverine Pipe Line Company*. The case concerns a proposed 26-mile, 12-inch pipeline to carry liquid petroleum products; four to seven miles of the pipeline would be within Lansing city borders. The city opposes the plan, arguing that the pipeline cannot be built within its borders without the city's approval.

In re: K.H., K.L., K.L., and K.J., Minors, concerns a petition to terminate parental rights. While the children have a legal father – their mother's husband -- a family court referee found that another man is the biological father of three of the children. The putative father seeks to intervene in the case; at issue is whether he can do so when the children have a legal father.

The Court will hear seven other cases, including medical malpractice, real property, tax, and disability issues.

Court will be held **November 12 and 13.** Court will convene at **9:30 a.m.** each day.

(*Please note: The summaries that follow are brief accounts of complicated cases and might not reflect the way in which some or all of the Court's seven Justices view the cases. The attorneys may also disagree about the facts, the issues, the procedural history, or the significance of their cases. For further details about these cases, please contact the attorneys*.)

Wednesday, November 12
Morning session

PEDEN v. CITY OF DETROIT, DETROIT POLICE DEPARTMENT (case no. 119408)
Attorney for plaintiff Allan Peden: Martin P. Krall, Jr./(586) 779-8900
Attorney for defendant City of Detroit, Detroit Police Department: Daryl Adams/(313) 961-2550
Trial court/judge: Wayne County Circuit Court/Hon. William J. Giovan
At issue: The plaintiff worked about fourteen years as a Detroit police officer before having a heart attack in 1986. He was placed on restricted duty status and continued to work, although he was later diagnosed with heart disease. In 1996, he was retired involuntarily with a nonduty disability pension. Were his rights violated under either the Persons With Disabilities Civil Rights Act or the Americans With Disabilities Act?
Background: Allan Peden was hired as a Detroit Police officer in January 1972. In February 1986, he filed an injury report asserting that he suffered a heart attack while doing clerical duties at the Thirteenth Precinct. Peden was later diagnosed with heart disease and underwent successful heart surgery. From 1986 until January 14, 1996, Peden's doctor recommended that Peden be placed on indefinite restricted duty due to his heart disease. The Police Department's Medical Section concurred with that diagnosis, and Peden was placed on restricted duty. In October 1996, Peden received an involuntary nonduty disability retirement, based on the Police Department's contention that his medical condition prevented him from performing the essential functions of a police officer. Peden later sued the City of Detroit, contending that the Police Department had illegally discriminated against him because of his disability in violation of Michigan's Persons With Disabilities Civil Rights Act (PWDCRA) and the federal Americans With Disabilities Act (ADA). The trial judge granted the City's motion for summary judgment and dismissed the case. The judge stated that, although there was nothing about Peden's health that prevented him from doing the work assigned to him, the City had made a management decision that it wanted all of its sworn police officers capable of doing all the work that a police officer may be called on to do. The Court of Appeals reversed in an unpublished per curiam opinion, stating that a genuine issue of fact existed as to whether Peden could perform his job duties despite his heart condition. The defendant appeals.

PEOPLE v. GOLDSTON (case no. 122364)
Prosecuting attorney: Timothy A. Baughman/(313) 224-5792
Attorney for defendant Glenn Goldston: Carolyn A. Blanchard/(248) 305-9383
Trial court/judge: Wayne County Circuit Court/Hon. Ulysses W. Boykin
At issue: Should evidence discovered in a search be suppressed where police relied on a search warrant that the trial court later found was defective? The prosecution argues that the Supreme Court should adopt a "good faith" exception to the exclusionary rule, which bars the use of evidence obtained in violation of the Fourth Amendment. Evidence obtained in violation of the Fourth Amendment is ordinarily inadmissible in a criminal trial.
Background: On September 23, 2001, defendant Glenn Goldston was at the corner of Carlysle and Middlebelt in Inkster soliciting funds for victims of September 11 and collecting money in a fireman's boot. He wore a t-shirt with the word "FIREMAN" on it, and also had with him a firefighter's helmet and jacket. Goldston had no connection with any fire department. The next day, police sought and obtained a warrant to search Goldston's house. A district judge issued a

search warrant on September 24, 2001, commanding the search of Goldston's home, and authorizing the seizure of "Police/Fire scanner(s) or radios, fire, EMS, Police equipment. Any and all emergency equipment, bank accounts, currency, donation type cans or containers, any and all other illegal contraband." When police searched Goldston's house that day, they discovered firefighter paraphernalia, some marijuana and a firearm. Goldston was charged with being a felon in possession of a firearm, felony-firearm, the misdemeanor of larceny by false personation involving between $200 and $1,000 (MCL 750.363), and two misdemeanor counts of possession of marijuana. He was also charged as a third-time habitual offender. The circuit judge suppressed the evidence and dismissed the felony charges, stating that the affidavit did not sufficiently establish probable cause for the search. The judge said that the affidavit did not explain when police had contact with defendant and did not connect the house to be searched to Goldston. The Court of Appeals denied the prosecution's application for leave to appeal. The prosecutor appeals, arguing that the exclusionary rule should not apply because the police did nothing wrong in carrying out the search. Under the exclusionary rule, evidence obtained in violation of the Fourth Amendment, which forbids unreasonable searches and seizures, is normally not admissible at trial. The prosecutor argues for a "good faith" exception to the exclusionary rule where there is no police misconduct involved.

GRAVES v. AMERICAN ACCEPTANCE MORTGAGE CORPORATION (case no. 119977)

Attorney for plaintiff Eileen V. Graves: Michael K. Dorocak/(248) 354-1190

Attorney for defendants American Acceptance Mortgage Corporation and Boulder Escrow, Inc.: Michael James Hagerty/(517) 548-3130

Attorneys for amicus curiae Michigan Land Title Association: John G. Cameron, Jr., Allison J. Mulder/(616) 752-2000

Attorneys for amicus curiae Real Property Law Section of the State Bar of Michigan: Vicki R. Harding/(313) 393-7324, Wilfred A. Steiner, Jr./(313) 568-6924

Trial court/judge: Oakland County Circuit Court/Hon. Michael Warren

At issue: As part of a divorce judgment, the plaintiff's former husband received the marital home while she retained a lien on the property. She recorded the lien; later that same day, her former husband gave a mortgage on the property, enabling him to pay off the land contract and get legal title to the property. Does the mortgage take priority over the plaintiff-wife's judgment lien?

Background: The plaintiff, Eileen Graves, was married to Steve Diaz. In 1987, Graves and Diaz purchased a home on a land contract. In 1994, they divorced. As part of the divorce judgment, Diaz was awarded the property while Graves held a lien of $7,500 plus interest. Graves recorded the lien on September 7, 1994. Later the same day, Diaz gave a mortgage on the property to American Acceptance Mortgage Corporation. He was in default on payments he owed under the land contract; he used the mortgage loan to pay off the land contract and obtain title to the property. American Acceptance later recorded the mortgage and assigned it to defendant Boulder Escrow, Inc. When Graves sued to foreclose on the judgment lien, Boulder filed claims against Diaz for default on the mortgage and against Graves. Boulder argued that its mortgage had priority over Graves' judgment lien. The circuit judge ruled that American Acceptance and Boulder had constructive knowledge of Grave's lien because she recorded the lien before the mortgage was recorded. Accordingly, the lien took priority, the judge concluded. In a published opinion, the Court of Appeals reversed, ruling that the mortgage Diaz gave to American

Acceptance was a purchase money mortgage which had priority over all other liens or interests, even those recorded earlier. Graves appeals.

Afternoon session

CATALINA MARKETING SALES CORPORATION v. DEPARTMENT OF TREASURY (case nos. 121673 & 121674)
Attorneys for petitioner Catalina Marketing Sales Corporation: James H. Novis/(517) 485-1483, Patrick R. Van Tiflin/(517) 377-0702
Attorney for respondent Department of Treasury: Roland Hwang/(517) 373-3203
Trial court: Michigan Tax Tribunal
At issue: The petitioner's business involves the printing of coupons on the back of supermarket checkout tapes. Manufacturers pay the petitioner for printing coupons for their products on the tapes. Is this a "sale" of the coupons to the manufacturers that can be taxed?
Background: Catalina Marketing developed a computer system for "reacting" to customers' purchases and printing coupons or messages on cash register check-out tapes. When a check-out clerk scans the bar code on a customer's purchase, Catalina's computer hubs outside Michigan generate instructions to print a coupon or message on the check-out tape. Catalina charges manufacturers for printing coupons for their products. Following a sales and use tax audit, the Michigan Department of Treasury assessed sales taxes against Catalina. Catalina appealed those assessments to the Michigan Tax Tribunal, which found that Catalina was selling the coupons to the manufacturers and that the transactions with the manufacturers were subject to the state sales tax. The Tribunal rejected Catalina's claim that the printed coupons were incidental to Catalina's non-taxable marketing services. In an unpublished per curiam opinion, the Court of Appeals affirmed the Tax Tribunal's ruling. Catalina appeals.

MAYOR OF THE CITY OF LANSING, et al., v. MICHIGAN PUBLIC SERVICE COMMISSION AND WOLVERINE PIPE LINE COMPANY (case no. 124136)
Attorneys for plaintiffs Mayor of the City of Lansing, City of Lansing, and Ingham County Commissioner Lisa Dedden: Margaret E. Vroman, Brian W. Bevez and Lisa Dedden/(517) 483-4320
Attorney for defendant Michigan Public Service Commission: William W. Derengoski/(517) 241-6680
Attorney for defendant Wolverine Pipe Line Company: Christine Mason Soneral/(517) 374-9184
Attorney for amicus curiae Michigan Municipal League: Dean M. Altobelli/(517) 487-2070
Trial court: Michigan Public Service Commission
At issue: Do MCL 247.183 and R 460.17601(2)(d) require a pipeline company to obtain the approval of municipalities for pipelines planned to be constructed, in part, along interstate highways that are within municipal borders, and, if so, does the approval have to be obtained before a permit application is filed with the MPSC?
Background: Appellant Wolverine Pipe Line Company is seeking to construct a 26-mile, 12-inch pipeline to carry liquid petroleum products. The pipeline will replace an existing 8-inch pipeline that, in part, crosses Meridian Township and the City of East Lansing. The replacement pipeline is planned to go largely around the City of Lansing, but four to seven miles of it would be within the city's borders. Wolverine initially proposed that the new pipeline would follow a

route similar to that of the existing 8-inch pipeline, through Meridian Township and East Lansing but not through Lansing. Wolverine sought the Michigan Public Service Commission's (MPSC) approval, but withdrew the request for approval of the segment of the pipeline traveling through Meridian Township and East Lansing. Nevertheless, the MPSC found that the replacement pipeline was needed. Wolverine later filed its application with the MPSC for approval of a revised, 26-mile route that largely follows I-96. The City of Lansing and its Mayor opposed the plan to construct part of the pipeline within the City of Lansing. A hearing was held before an administrative law judge on Wolverine's application for permission to construct the 26-mile pipeline. The City of Lansing moved to dismiss the application, citing Const 1963, art 7, § 29 and MCL 247.183. Michigan Constitution 1963, article 7, section 29 provides in part that "No person, partnership, association or corporation, public or private, operating a public utility shall have the right to the use of the highways, streets, alleys or other public places of any county, township, city or village for wires, poles, pipes, tracks, conduits or other utility facilities, without the consent of the duly constituted authority of the county, township, city or village...." MCL 247.183, a section of the Michigan State Highway Code, states in part that "Telegraph, telephone, power, and other public utility companies, cable television companies, and municipalities may enter upon, construct, and maintain telegraph, telephone, or power lines, pipe lines, …or similar structures upon, over, across, or under any public road, bridge, street, or public place, including, subject to subsection (2), longitudinally within limited access highway rights-of-way .... A telegraph, telephone, power, and other public utility company, cable television company, and municipality, before any of this work is commenced, shall first obtain the consent of the governing body of the city, village, or township…." The City of Lansing argued that Wolverine's application should be denied because it had not obtained the City's consent for the pipeline to pass through Lansing. The MPSC ruled that there was a need for the proposed pipeline and that Wolverine's design and route were reasonable. The MPSC therefore authorized Wolverine to "construct, operate, and maintain" the pipeline "following the Interstate 96 right-of-way as proposed" by Wolverine. The MPSC rejected Lansing's arguments that municipal consent was required prior to the MPSC ruling. Accordingly, the MPSC found no violation of its rule R 460.17601, which requires pipeline applications to include evidence of municipal consent when such approval is required by statute. In a published opinion, the Court of Appeals affirmed the MPSC order, including the finding that the pipeline plan was reasonable. But the Court of Appeals also ruled that Wolverine was required to obtain municipal consent before the pipeline could be constructed. Wolverine appeals, arguing in part that MCL 247.183(2) does not require a municipality's consent for construction along interstate highways.

Thursday, November 13
Morning session

MARTIN v. BELDEAN, et al. (case no. 120932)
Attorney for plaintiffs Robert Martin and Cathy Martin: Ernest R. Bazzana/(313) 983-4798
Attorneys for defendants David A. Beldean, et al.: Christine A. Waid, Deborah Brouwer/(248) 858-5850
Attorneys for amicus curiae Michigan Department of Consumer and Industry Services: A. Michael Leffler, James E. Riley/(517) 373-7540
Trial court/judge: Oakland County Circuit Court/Hon. Alice Gilbert

At issue: The plaintiffs claim ownership of a portion of an outlot in a subdivision based on a seemingly good chain of title, while the defendants (other property owners in the subdivision) claim ownership of the entire outlot based on reservation language in the "dedication" paragraph of the subdivision plat. Was this a "private dedication"? If so, was it valid?

Background: The Tan Lake Shores Subdivision in Oxford Township, Oakland County, was platted in November 1969. In a section entitled "dedication," the plat refers to outlots in the subdivision. This language, which appears in a different type than the rest of the dedication section, states in part that "Outlot A is reserved for the use of the lot owners...." At about the same time that the plat was signed and recorded, the developers signed a document entitled "Restrictions" which was also recorded. Paragraph 17 of the restrictions provides that the restrictions expire after 25 years: "17. All the restrictions, conditions, covenants, charges, easements, agreements and rights herein contained shall continue for a period of twenty-five years from date of recording this instrument." All the lots in the subdivision either border on Tan Lake or have lake access by way of a canal. Outlot A, which borders on Tan Lake, is at the end of the subdivision. The adjacent lot to the north is Lot 21, which also borders the lake. The dispute in this case concerns the northern one-third of Outlot A.

Robert and Cathy Martin purchased Lot 21 and the northern one-third of Outlot A on October 25, 1996. Lot 21 and the northern one-third of Outlot A have been conveyed together several times since the subdivision was platted. Every conveyance was the same: they all included both pieces of land and treated the two pieces as a single unit. Outlot A and Lot 21 were vacant for many years; the Martins intended to build on the property. It appears undisputed that the southern two-thirds of Outlot A were not maintained by anyone and became a general dumping ground for garbage and trash. Nobody paid taxes or insurance on the property, and it reverted to the state following a tax sale in 1991. It is not disputed that the Martins and prior owners have always paid the taxes and insurance on the northern one-third of Outlot A, have maintained Outlot A to some extent even though they did not live there, and at some point posted No Trespassing signs which they claim were posted on Outlot A. The Martins file suit to determine their ownership of the northern one-third of Outlot A. They contended in part that the dedication of Outlot A to subdivision owners' use had expired, and that the other owners had lost any rights they might have had to use the property. Other owners in the subdivision opposed the suit, asserting that they had rights in all of Outlot A because of the dedication in the plat. They claimed that, over the years, all of Outlot A was used by owners in the subdivision to launch boats and to have access to the lake for swimming. The trial court judge ruled in favor of the Martins. She stated in part that "the portion of Outlot A that is in dispute has been conveyed and used inconsistent with public ownership." In a published opinion, the Court of Appeals affirmed the trial court's ruling. The Court of Appeals concluded that, as a matter of law, the plat could not and did not convey any title to the disputed property by dedication to defendants or any owners of lots in the subdivision because Michigan law does not recognize "private" dedications. The court further reasoned that there was no indication that the dedication had ever been accepted, and that any intent to dedicate the disputed portion of Outlot A to anyone was "negated" by the inconsistent act of privately selling the property. The defendants appeal.

LITTLE, et al. v. HIRSCHMAN, et al. (case no. 121836)
Attorney for plaintiffs James and Cheryl Little, et al.: Larry A. Salstrom/(517) 347-1771
Attorney for defendant Betty H. Hirschman: Aaron J. Gauthier/(231) 627-7151

Attorneys for amicus curiae Michigan Association of Realtors: Gregory L. McClelland, Melissa A. Hagen/(517) 482-4890
Attorneys for amicus curiae Michigan Department of Consumer and Industry Services: A. Michael Leffler, James E. Riley/(517) 373-7540
Trial court/judge: Cheboygan County Circuit Court/Hon. Scott L. Pavlich
At issue: The parties are all property owners in the same 1913 subdivision plat, which provided for streets and alleys that were "dedicated to the use of the public" and parks that were "dedicated to the owners of the several lots." Were these "private dedications"? If so, were they valid?
Background: The parties are property owners in a subdivision located at the juncture of the Cheboygan River and Mullett Lake in Cheboygan County. The subdivision was platted in 1913. The plat "dedication" states in part "that the streets, and alleys, as shown on said plat are hereby dedicated to the use of the public and the parks are hereby dedicated to the owners of the several lots." The deeds to the lots refer to the recorded plat. The plat identifies parks, described as Lakeside Park and Riverside Park, which run along the lake shore. In general, the plaintiffs in this case are owners of property adjacent to Riverside Park, who have used the "dedicated" alley and Lakeside Park areas, and the defendants own lots that adjoin those areas. In a different case, the circuit court determined that the public had no interest in the alleys because the Cheboygan Road Commission had never formally accepted the dedication and because a period of 84 years had elapsed between the approval of the plat and the filing of that lawsuit. In this case, the plaintiffs alleged that they had an ongoing and continuous property interest in all of the alleys identified in the plat, and specifically in the alleys adjacent to defendants' properties. The plaintiffs also claimed that the defendants had attempted to obstruct plaintiffs' access to the parks and alleys. The defendants sought to end any use of the parks, alleging that the plaintiffs had failed to accept the private dedication of the parks and that the plattors had revoked any dedication of the parks. The defendants also argued that the ruling in the earlier case barred the plaintiffs' use of the alleys. The trial judge ruled in favor of the plaintiffs. He found that the plaintiffs had "property rights in this area designated as the lakeside park due to the fact that they are lot owners in the plat." By "traditional and historical use" of the park as a "common beach area," the parties "have defined the scope and definition of the lakeside park," the judge stated. He also found that an alley that led to the park could be used "by either foot or motor vehicles." Because of their historical use, the judge said, the other alleys could be used only for foot traffic. In an unpublished per curiam opinion, the Court of Appeals reversed and remanded the case to the trial court for further proceedings. The Court of Appeals ruled that the "dedication" of the parks to the owners of the plat lots was invalid because it was not directed to the public. The plaintiffs appeal.

HALLORAN v. BHAN, et al. (case no. 121523)
Attorney for Eileen Halloran, Temporary Personal Representative of the Estate of Dennis J. Halloran, Deceased: E. Robert Blaske/(269) 964-9491
Attorney for defendants Raakesh C. Bhan, M.D and Critical Care Pulmonary Medicine, P.C.: Graham K. Crabtree/(517) 482-5800
Attorneys for defendant Battle Creek Health Systems: Robert M. Wyngaarden, Michael L. Van Erp/(517) 349-3200
Attorneys for amicus curiae Michigan State Medical Society: Richard D. Weber, Joanne Geha Swanson/(313) 961-0200

Trial court/judge: Calhoun County Circuit Court/Hon. James C. Kingsley
At issue: A provision in Michigan's medical malpractice statute (MCL 600.2169) states that a plaintiff's expert in a medical malpractice case must specialize "at the time of the occurrence that is the basis for the action in the same specialty as" the defendant physician. The statute also states that "if the [defendant physician] is a specialist who is board certified, the expert witness must be a specialist who is board certified in that specialty." In this case, both the defendant physician and the proposed expert were "critical care" specialists, but they were not board-certified in the same specialty; their critical care certifications were granted by their respective boards. Is the proposed expert qualified to testify?
Background: The estate of Dennis J. Halloran sued Dr. Raakesh C. Bhan and others, claiming that Halloran's death was caused by negligent treatment at the Battle Creek Health Systems emergency room. Bhan is board certified in internal medicine by the American Board of Internal Medicine (ABIM); Bhan has also received a certificate of added qualification in critical care medicine from the ABIM. The estate proposed Thomas J. Gallagher, M.D. as its standard of care witness at trial. Gallagher is board certified in anesthesiology by the American Board of Anesthesiology (ABA) and has received a certificate of added qualification in critical care medicine from the ABA. Gallagher is not board certified in internal medicine. There is no board certification for critical care medicine. The defendants filed a motion to strike Dr. Gallagher as the estate's standard of care witness, alleging that he was unqualified because Dr. Bhan is board certified in internal medicine and Gallagher is not. The trial judge granted the defendants' motion, finding that, because Gallagher's primary specialty was different from Bhan's, Gallagher was not qualified as an expert witness. In a 2-1 decision, the Court of Appeals reversed and remanded the case for further proceedings. The majority held that there was a sufficient match of board certifications because both the expert and the defendant physician possessed certificates in critical care medicine. The alleged malpractice also involved critical care medicine, so there did not need to be a "perfect match" of every board certification held by the defendant physician, the majority concluded. The dissenting judge indicated that the board certification itself, not the certificate of added or special qualification, should be the defining credential for the expert witness. The defendants appeal.

GROSSMAN v. BROWN (case no. 122458)
Attorney for Rebecca Grossman, Personal Representative of the Estate of Fred Grossman, Deceased: Samuel A. Meklir/(248) 552-1000
Attorney for defendants Otto W. Brown, M.D., and Sinai Hospital, an assumed name of Sinai Hospital of Greater Detroit, a Michigan non-profit corporation: Linda M. Garbarino/(313) 964-6300
Trial court/judge: Wayne County Circuit Court/Hon. Kaye Tertzag
At issue: What is the meaning of the word "specialty" in MCL 600.2169? How closely must the qualifications of the expert who signs the plaintiff's med-mal affidavit match the qualifications of the defendant physician who is alleged to have acted negligently? In this case, both the plaintiff's expert and the defendant physician are board-certified general surgeons, but the expert lacks a certificate of special qualification in vascular surgery, which the defendant has.
Background: The defendant physician in this medical malpractice case, Dr. Otto Brown, is board certified in general surgery with a certificate of special qualification in vascular surgery. The plaintiff's expert, surgeon Dr. Alex Zakharia, is board certified in general surgery and states that he specializes in vascular surgery. Zakharia does not have a certificate of special

qualification in vascular surgery. Brown and defendant Sinai Hospital argued that Zakharia was not qualified to sign the plaintiff's affidavit of merit or testify against Brown. MCL 600.2912d states that a plaintiff in a medical malpractice action "shall file with the complaint an affidavit of merit signed by a health professional who the plaintiff's attorney reasonably believes meets the requirements for an expert witness under section 2169." MCL 600.2169 states that a plaintiff's expert in a medical malpractice case must specialize "at the time of the occurrence that is the basis for the action in the same specialty as" the defendant physician. Based on the statute, the defendants contended, all malpractice claims against Brown must be dismissed with prejudice, along with all claims against Sinai Hospital based on Brown's conduct. The trial judge denied the defendants' motions and the Court of Appeals denied the defendants' application for leave to appeal. The defendants appeal.

Afternoon session

IN RE: K.H., K.L., K.L., AND K.J., Minors (case no. 122666)
Attorney for K.H., K.L., K.L., and K.J., Minors: William Lansat/(248) 258-7074
Attorney for petitioner Family Independence Agency: Anica Letica/(248) 452-9178
Attorney for respondent Tina Jefferson: Karen Gullberg Cook/(248) 644-7678
Attorney for respondent Richard Jefferson: George Fuksa/(248) 210-9024
Attorney for respondent Frederick Herron: Abbie A. Shuman/(248) 356-4963
Attorney for respondent Larry Lagrone: J. Douglas Otlewski/(248) 651-6040
Attorney for amicus curiae Michigan Attorney General: Julie A McMurtry/(313) 833-3777
Trial court/judge: Oakland County Circuit Court/Hon. Joan Young
At issue: In this termination of parental rights case, a referee specifically found that one of two putative fathers was indeed the biological father of three of the children. However, the children already had a legal father, their mother's husband. Does the putative father have standing to intervene in the case?
Background: In 1998, the Family Independence Agency (FIA) filed a child protective proceeding alleging neglect of four children by their mother, Tina Jefferson. Also named as respondents were Jefferson's husband, Richard Jefferson, and two other men, Frederick Herron and Larry LaGrone, who were thought to be the natural fathers of the children. Ultimately, the Oakland County Prosecutor and the FIA filed parental rights termination petitions against the Jeffersons, Herron and LaGrone. The family court referee made two findings: that the Jeffersons were married at the time that each of the children was born and that LaGrone is the biological father of three of the children. LaGrone filed a motion seeking a determination of his paternity. The trial judge granted LaGrone's motion. Under Michigan's Paternity Act, putative fathers do not have standing to seek a determination of paternity in cases where there is a legal father, the judge noted. Under case law interpreting the Juvenile Court Rules, however, a putative father has standing in a neglect proceeding if the court determines that he is the biological father, the judge concluded. The lawyer-guardian ad litem (LGAL) for the children filed an application for leave to appeal, which was supported by Tina Jefferson. The Court of Appeals denied the LGAL's application for leave to appeal. The LGAL appeals to the Supreme Court on behalf of the children.

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